



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

David E. MCDYSAN et al.

Conf. No.: 7586

Application No.: 09/723,481

Examiner: Bates, K.

Filed: November 28, 2000

Group Art Unit: 2155

Customer No.: 25537

Attorney Docket No.: RIC00042

Client Docket No.: 09710-1232

For: PROGRAMMABLE ACCESS DEVICE FOR A DISTRIBUTED NETWORK
ACCESS SYSTEM

Commissioner for Patents
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicants respectfully request a pre-appeal brief review be made of the present application for at the least the following clear errors.

I. THE OFFICE ACTION EFFECTIVELY DISREGARDS THE FEATURES OF "A PACKET HEADER FILTER" BY RESORTING TO AN UNREASONABLE READING OF THE REFERENCE

For example, claim 1 is as follows with added emphasis:

1. A programmable access device for use in a network access system, said programmable access device comprising:

first and second network interfaces through which packets are communicated with a network;

a packet header filter and a forwarding table, wherein the forwarding table is utilized to forward packets between the first and second network interfaces, and **wherein said packet header filter identifies messages received at one of the first and second network interfaces on which policy-based services are to be implemented** and passes identified messages via a message interface to an external processor included in said network access system for implementation of the policy-based services by the external processor, wherein

said packet header filter passes all other received messages through the packet header filter to an other processor; and
a control interface through which said packet header filter and said forwarding table are programmed.

The Advisory Action, on page 2, contends “the switching fibre [sic] operates as both the forwarding table and packet filter,” explaining that “[t]he fibre operates by identifying the types of services that each received packet needs to receive, this **implies that the packet is analyzed** and identifier [sic], which is the operation of a packet filter....” This conclusion, even if factually substantiated, still falls short of satisfying the claims with respect to a “filter.” Applicants note that analysis of a packet does not necessarily entail filtering, particularly in the manner claimed (i.e., “wherein said packet header filter identifies messages received at one of the first and second network interfaces on which policy-based services are to be implemented”). In the Final Office Action, on page 3, the Examiner refers to col. 10: 36-47 for the claimed packet header filter, in which the channel identifier used by the switch fabric 340 is presumably the claimed packet header filter. The cited passage discusses that the switch fabric 340 may maintain a channel identifier associated with each channel, and that in case of ATM cells, the VCI/VPI information in the bit groups uniquely defines such a channel. One of ordinary skill in the art would not make such a technical leap given the disclosure of *Alles et al.* This disclosure, at best, stands for the proposition that channels are uniquely identified by channel identifiers, which for example, is a VCI/VPI; such information is used for forwarding the cells to the proper channel. That is, the VCI/VPI is not used to filter the cells, but instead, for addressing purposes.

Moreover, the *Alles et al.* system predetermines which ATM cells are to be applied certain policies based on the subscriber identifier (col. 10: 33-35). Instead of filtering, the switch fabric 340 simply routes traffic based on a channel identifier to a corresponding specific packet

service card 350, which applies the policy corresponding to the subscriber. Different channel identifiers are predesignated to the corresponding packet service cards 350, without any need to filter, but routing to the packet service card 350. In a sense, the determination of whether to apply any policy in the *Alles et al.* system is performed in advance of the call arriving at the switch fabric 340, and therefore is not performed at the switch fabric 340.

II. THE OFFICE ACTION OVERLOOKS THE FEATURE OF “A CONTROL INTERFACE THROUGH WHICH SAID PACKET HEADER FILTER AND SAID FORWARDING TABLE ARE PROGRAMMED”

Conspicuously, the Advisory Action does not provide any rebuttal to Applicants’ argument that the feature of “a control interface through which said packet header filter and said forwarding table are programmed” is absent from the applied art. In the Final Office Action, on page 12, the Examiner asserts that “the packet header filter is programmed with channel identifiers that describe which service card ... this is a programmed feature within the program header and also much [sic] be inherently programmed when the service cards are programmed....” First, assuming the Examiner’s interpretation that the claimed packet header filter is the channel identifier, the above statement is a tautology. Effectively, the Examiner is remarking that the channel identifiers can be programmed with channel identifiers. Such tautology is indicative of the inability to sustain the reading of the reference adopted by the Examiner.

Also, as indicated in Applicants’ Response dated April 10, 2006, given the operation of the *Alles et al.* system, such programming of channel identifiers would be akin to updating a forwarding table. Thus, the features of “packet header filter” and the “forwarding table” cannot both be met by *Alles et al.*

**III. THE OFFICE ACTION FURTHER IGNORES THE FEATURE OF
“WHEREIN THE PACKET HEADER FILTER IS A FIRST PACKET
HEADER FILTER, AND WHEREIN THE PROGRAMMABLE ACCESS
DEVICE FURTHER COMPRISES A SECOND PACKET HEADER
FILTER THAT RECEIVES PACKETS DIRECTLY FROM THE
SECOND NETWORK INTERFACE” OF CLAIMS 3, 28 AND 50**

The Advisory Action does not address this feature, and thus, summarily dismisses Applicants' arguments. This silence is not surprising, as the use of multiple packet header filters clearly reveals the unreasonableness of the Examiner's reading of *Alles et al.* In fact, there can be no technically plausible interpretation. As argued in Applicants' prior Response, the proposed modification to the *Alles et al.* system would entail the use of multiple sets of “channel identifiers” for the switch fabric 340. Such construction is devoid of any technical merit.

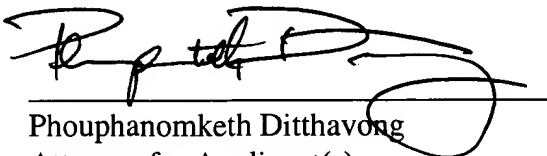
IV. CONCLUSION

For the foregoing reasons, the Appeal Brief Panel is respectfully requested to withdraw the rejection of the present application in light of these clear errors and allow the pending claims.

Respectfully Submitted,

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6/16/06
Date


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